

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FRANCO SIERRA,

Defendant Below,
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below,
Appellee.

§

§ No. 352, 2017

§

§ Court Below—Superior Court
§ of the State of Delaware

§

§ Cr. ID No. 1608023477 (N)

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Submitted: January 18, 2018

Decided: January 24, 2018

Before **VAUGHN**, **SEITZ**, and **TRAYNOR**, Justices.

ORDER

This 24th day of January 2018, upon consideration of the appellant's Supreme Court Rule 26(c) brief, the State's response, and the record below, it appears to the Court that:

(1) On June 19, 2017, Sierra resolved two different cases by pleading guilty to Carrying a Concealed Deadly Weapon and Possession of a Destructive Weapon and pleading *nolo contendere* to Assault in the Second Degree. After initially indicating that he might wish to withdraw to his guilty plea, Sierra chose to proceed with the presentence investigation process and sentencing. The Superior Court sentenced Sierra as follows: (i) for Possession of a Destructive Weapon, five years of Level V incarceration, with credit for thirty-three days previously served,

suspended after four months for one year of Level III probation; (ii) for Assault in the Second Degree, eight years of Level V incarceration, suspended after eighteen months for one year of Level III probation; and (iii) for Carrying a Concealed Deadly Weapon, eight years of Level V incarceration, suspended for one year of Level III probation. This is Sierra's direct appeal.

(2) On appeal, Sierra's counsel ("Counsel") filed a brief and a motion to withdraw under Supreme Court Rule 26(c). Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. Counsel informed Sierra of the provisions of Rule 26(c) and provided Sierra with a copy of the motion to withdraw and the accompanying brief.

(3) Counsel also informed Sierra of his right to identify any points he wished this Court to consider on appeal. Sierra has not raised any issues for this Court's consideration. The State has responded to the Rule 26(c) brief and has moved to affirm the Superior Court's judgment.

(4) When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), this Court must: (i) be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (ii) conduct its own review of the record and determine whether the appeal is so totally

devoid of at least arguably appealable issues that it can be decided without an adversary presentation.¹

(5) This Court has reviewed the record carefully and has concluded that Sierra's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Counsel has made a conscientious effort to examine the record and the law and has properly determined that Sierra could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Justice

¹ *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *Leacock v. State*, 690 A.2d 926, 927-28 (Del. 1996).